

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

|                        |   |                           |
|------------------------|---|---------------------------|
| MARCOS RAYOS, #311171, | ) |                           |
| Plaintiff,             | ) |                           |
|                        | ) | No. 1:15-cv-1153          |
| -v-                    | ) |                           |
|                        | ) | Honorable Paul L. Maloney |
| WILLIE SMITH, et al.,  | ) |                           |
| Defendants.            | ) |                           |
|                        | ) |                           |

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**ORDER ADOPTING REPORT AND RECOMMENDATION AND DISMISSING  
DEFENDANT THURLBY**

Plaintiff Marcos Rayos, a prisoner under the control of the Michigan Department of Corrections (MDOC), filed a civil rights lawsuit against multiple MDOC employees. Defendant Lloyd Thurlby is sued in his personal and official capacities. Thurlby, passed away in July 2018. A notice of death was filed in August 2018.

The magistrate judge issued a report recommending the claims against Thurlby be dismissed. (ECF No. 216.) Plaintiff filed objections. (ECF No. 217.) After being served with a report and recommendation (R&R) issued by a magistrate judge, a party has fourteen days to file written objections to the proposed findings and recommendations. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2). A district court judge reviews de novo the portions of the R&R to which objections have been filed. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3).

Plaintiff makes two arguments. First, Plaintiff states he was given bad advice by his appointed legal writer, who advised that official capacity claims do not abate upon the death of the named defendant. Second, Plaintiff requests the Court substitute Debbie Thurlby as the new defendant. Plaintiff contends Debbie Thurlby is the "executioner" of Lloyd's estate.

The Report and Recommendation (ECF No. 216) is **ADOPTED** as the Opinion of this Court. Plaintiff's objections are overruled. The claims against Lloyd Thurlby are **DISMISSED**. Plaintiff did not timely seek to substitute the estate as the proper party. *See* Fed. R. Civ. P. 25(a)(1). Plaintiff's official capacity claim will survive Thurlby's dismissal because Plaintiff has sued multiple defendants in their official capacities. All of those claims are functionally claims against the same entity.

**IT IS SO ORDERED.**

Date: November 27, 2018

/s/ Paul L. Maloney  
Paul L. Maloney  
United States District Judge